

5/13/80

In the Matter of the Petition)
for Redetermination Under the)
Sales and Use Tax Law,)

Account No.

The above entitled matter came on regularly for hearing in Sacramento, California, on Tuesday, August 14, 1979.

For Petitioner:

Protested Item

Contentions of Petitioner

1. These units do not qualify as mobile transportation equipment because they are not used for transporting other property.
2. Some of the units are incapable of movement for substantial distances.
3. Similar business transactions by our competitors have been granted relief from the tax for prior periods.

Summary of Petition

The petitioner is a corporation engaged in the business of selling and renting portable air compressors, steam cleaners, portable tools and related accessories.

The protested measure of tax consists of separately stated tax reimbursement determined to represent excess tax reimbursement charged on rentals of portable air compressors. A like amount reported was offset as the fair hourly rental of the units in question.

The theory of the staff's determination is that the units in question constitute mobile transportation equipment excluded from classification as leasing sales. Since the lease of mobile transportation equipment constitutes a use of the property by the lessor, it was concluded that the collection of tax from the lease customers represented excess tax reimbursement.

see Reg. 1.661 for today's rule

The units in question consists of self contained compressor units mounted on a 2-wheel or 4-wheel trailer. Except as noted hereafter, it is conceded that the units may be towed over a roadway for substantial distances at highway speeds.

Petitioner contends that the units are improperly classified as mobile transportation equipment because they are not used primarily for transportation and do not transport persons or any other property.

It is also contended that the units mounted on 4-wheel trailers were not capable of being towed over the highway at highway speed. The serial number of units in this category are Photographs of the units in question were presented at the hearing and made a part of the file.

Finally, it is contended that the petitioner is being taxed differently than any person engaged in renting compressors. Specifically, it was pointed out that the Board staff had advised another user of compressors that no adjustment would be made of its reporting method for prior periods.

Subsequent to the date of the preliminary hearing the petitioner has forwarded copies of its rental agreements with compressor customers. They do not indicate a basis for treatment of the amounts collected as reimbursement for the lessor's use tax expense.

Analysis & Conclusions

The question presented is whether the rental property is mobile transportation equipment within the following definitions provided by the statute and Regulation 1661.

Revenue and Taxation Code Section 6023:

"'Mobile transportation equipment' includes equipment such as railroad cars and locomotives, buses, trucks (except 'one-way rental trucks'), truck tractors, truck trailers, dollies, bogies, chassis, reusable cargo shipping containers, aircraft and ships, and tangible personal property which is or becomes a component part of such equipment. 'Mobile transportation equipment' does not include passenger vehicles as defined in Section 465 of the Vehicle Code, trailers and baggage containers designed for hauling by passenger vehicles, or 'one-way rental trucks' as defined and identified pursuant to Section 6024."

Regulation 1661 implements this provision by providing in pertinent part as follows:

"(b)(1) The term 'mobile transportation equipment' includes only equipment for use in transporting persons or property for substantial distances. The term does not include items of a kind commonly used only in loading or unloading persons or property, or short distance moving within the confines of a limited area, such as a loading dock, warehouse, terminal, bay or airport. Examples of such items are hand dollies, forklift trucks, mine cars, pilot boats, tugboats and lighters, not including, however, lighters or barges specifically designed to be carried regularly aboard vessels for substantial distances. The term does include pickup trucks and tangible personal property which is or becomes a component part of mobile transportation equipment."

It is to be noted that the definitions are not all-inclusive. The term includes a vehicle chassis and parts which become a component part of mobile transportation equipment.

Leases of mobile transportation equipment are excluded from classification as leases sales (Revenue and Taxation Code Section 6006(g)(5)). The effect of this classification is to make a lease of the property by a person who tendered a resale certificate subject to use tax measured by the full purchase price at the time of his first leasing of the property (Revenue and Taxation Code Sections 6244, 6201, et seq.).

Our review indicates that the board staff has ruled that an item of equipment is to be regarded as mobile transportation equipment even though it does not transport property other than its integrated component parts if it is designed for movement over the highways for substantial distances (see annotated ruling No. 335.0050, 1 Business Taxes Law Guide 3232 (mobile cranes)). The staff has also interpreted the transportation equipment classification to be applicable even though the unit does not transport persons other than the driver.

The units in question do not fit within any of the exclusions provided by the implementary definition and except as noted hereafter the units are clearly designed for movement over the public highway for substantial distances. They appear indistinguishable from the property classified as mobile transportation equipment under annotated ruling No. 335.0050. Similar rulings have been issued for cement mixers, vehicle hoists, and mobile water chilling units. Accordingly, it is our conclusion that the staff's classification of the 2-wheel units should be upheld.

The 4-wheel units require assisted movement over the public highway and therefore do not qualify as equipment designed for movement for substantial distances. They should not be classified as mobile transportation equipment.

The claim that the board did not apply the tax to another taxpayer for prior periods does not provide any legal basis for cancellation of amounts determined to be due and owing.

ie. it cannot simply be towed @ highway speeds

Recommendation

It is recommended that the measure of tax attributable to the 4-wheel units be deleted from the measure of tax.

W. E. Burkett
W. E. Burkett, Hearing Officer

5-13-80
Date

REVIEWED FOR AUDIT:

Principal Tax Auditor

Date